From: Greg Buhtz
To: Microsoft ATR
Date: 1/24/02 2:26am
Subject: Microsoft Settlement

To: U.S. Department of Justice
Re: Microsoft Settlement

The Proposed Final Judgement is seriously flawed and should not be accepted as written.

As long as any judgement permits Microsoft to maintain its monopoly in the PC Operating System (OS) market, Microsoft must be enjoined to treat all OEMs alike, IAPs (Internet Access Providers) alike, and ISVs alike so it does not artificially upset competition in non-PC OS markets in which it does not offer a competing product.

The Judgement treats Microsoft partners and competitors unfairly by singling out "the 20 largest".

In markets in which it does offer a competing product, it must expose to competitors all OS APIs which it takes advantage of in its own products. This requires a definition of what comprises an OS API. I suggest that any program that is bundled with a Microsoft OS as part of a single salable unit or which is required to make the OS functionally complete for its intended purpose, which exposes an interface which can be programmatically accessed (e.g. COM typelibrary, scripting interface, or command-line interface), is an OS API.

The Judgement permits Microsoft to define what is, and is not, part of the OS.

Since it is possible to incompletely document APIs, if a Microsoft product ships (becomes available for use by non-Microsoft employees) which uses an undocumented feature of an API, the source code for that specific API must be made publicly available on the Web to: 1. make up for the deficiency in documentation, and 2. remove any inequity between ISVs receiving the information before others. To determine if a Microsoft product uses an undocumented API, the U.S. Government must retain the right to reverse engineer Microsoft properties, and be required to do so whenever a competitor requests.

The Judgement permits Microsoft to continue to take advantage of its monopoly power in the most fundamental ways.

There needs to be a concrete definition of when Microsoft ceases to have a monopoly in the PC OS market so that these special requirements can be abandoned. This will encourage Microsoft to permit competition. A minimum requirement is that there appear in the market competing platforms that

support a minimum set of functions which do not rely on Microsoft products or services. The functions which are required by the consumer market today are, at a minimum: email, web-browsing (including animation, audio, and video data types), written document authoring, file transfer, spreadsheet functions, action video games, and non-technical maintenance. Linux is getting close, but lacks consumer market momentum.

The Judgement lacks a termination clause that is strongly linked to the definition of Microsoft's monopoly power.

I'd like to comment on the harm Microsoft has brought to consumers by its anti-competitive actions. We lack security because Microsoft has ignored basic mechanisms introduced in competing technologies (e.g. Java's sandbox security model and provably secure programming languages). We lack choice from highly componentized OS architectures. We lack integration because of proprietary file formats, APIs, and communication protocols.

Since the PC has become a required utility for the American industry and citizenry, and Microsoft has established itself as the gatekeeper for the quality of access to this utility, Microsoft must be constrained to manage that utility in the best interests of the public.

I want Microsoft to be able to profit from its innovation, but not at the loss of innovations which are undermined, not because they are technically inferior, but because they were not Microsoft's.

Yours,

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